

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS (Chicago)

In re the matter of:

CAESARS ENTERTAINMENT
OPERATING COMPANY, INC.

Debtor.

CASE NO. 15-01145
JOINTLY ADMINISTERED
CHAPTER 11
JUDGE A BENJAMIN GOLDAR

NOTICE OF MOTION AND CERTIFICATE OF SERVICE

TO:

**SEE ATTACHED SERVICE
LIST**

On July 22, 2015, at 1:30 p.m., I shall appear before the Honorable A. BENJAMIN GOLDAR in the Courtroom designated for the Caesars' Omnibus hearings in the Case Management Procedures Order [Docket 1165], at the Dirksen Federal Courthouse, 219 S. Dearborn Street, Chicago, IL 60604, Courtroom # 2525, or in his / her absence, before such other Bankruptcy Judge as may be presiding in his/her place and stead, and shall then and there present the attached Motion to Modify the Automatic Stay at which time and place you may appear if you so see fit.

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CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I served a copy of this Notice with Motion to Modify the Automatic Stay attached, upon the parties listed on the attached list, by mailing same in a properly addressed envelope, postage prepaid, from the Vernon Hills Post Office, Lakeview Parkway, Vernon Hills, Illinois 60061, before the hour of 5:00 p.m. on the 3rd day of July, 2015, or via electronic notice as indicated above.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS (Chicago)

In re the matter of:

CAESARS ENTERTAINMENT
OPERATING COMPANY, INC¹

Debtor.

CASE NO. 15-01145
JOINTLY ADMINISTERED
CHAPTER 11

JUDGE A BENJAMIN GOLDAR

MOTION TO MODIFY AUTOMATIC STAY

Now Comes DONNA CERIONE, ET AL/DOMINIC DETETTA, a creditor herein, by and through one of their counsel, Amy A. Aronson, Aronson & Walsh, P.C., its attorneys, and moves this Honorable Court for entry of an Order modifying the restraining provisions of § 362 of the Bankruptcy Code, granting relief to allow the movant to litigate the claim pending against the debtor in New Jersey, to enforce any judgment obtained therein solely against insurance coverage and/or liability insurer, and in support thereof respectfully represents as follows:

1. That on January 15, 2015, the Debtor herein filed a petition for relief under Chapter 11 of the Bankruptcy Code. The debtor, Caesars Entertainment Operating Company, Inc. continues to operate as debtors in possession under 11 US Code 1107(a) and 1108.
2. This court has subject matter jurisdiction over this matter pursuant to 28 USC Sections 157 and 1334. Venue is proper under 28 USC sections 1408 and 1409. This matter is a core proceeding pursuant to 28 USC Sec. 157(b)(2).
3. On December 2, 2013, Donna Cerione, as General Administratrix and Administratrix Ad Prosequendum and Guardian Ad Litem of Dominic Detetta, filed a three count complaint in the Superior Court of New Jersey Law Division [CUM-L-1017-13] against Caesars Entertainment Corporation, Caesars Entertainment License Company, LLC., Bailey's Hotel and Casino, Bailey's Wild West Casino, and John Doe Corporation. The complaint was

premised on a violation of the New Jersey Dram Shop Act, Pain and Suffering under the New Jersey Survivorship Act and Wrongful Death.

4. On or about June 24, 2014, an answer was filed by Defendant Bally's Park Place, Inc. dba Bally's Atlantic.

5. Through discovery plaintiff learned that there is an insurance policy which provides the coverage to the defendant debtor in the event of a loss such as this one. To the extent that such coverage is available, creditor moves this court to allow her to proceed in the Superior Court of New Jersey.

6. The movant seeks stay relief under 11 U.S.C. Section 362(d)(1) for the limited purpose of liquidating her claim against the debtor defendant as may be possible and appropriate and to enforce said judgment against the insurance coverage. Therefore the requested relief is limited to the insurance coverage and this creditor's right as an unsecured creditor in the Debtor's Chapter 11 bankruptcy case.

7. The Bankruptcy Code provides that upon request of a party in interest, the Court shall grant relief for cause under 11 USC Sc. 362(d)(1). The creditor bears the initial burden to establish *prima facie* case for stay relief. Then the burden shifts to the debtor to show why relief would be unwarranted. Cause can be as simple as a request to continue litigation in the place of origin if no great prejudice exists. *SCO Group, Inc.*, 395 B.R.852 (Bankr. D.Del. 2007)

8. Legislative history supports that with issues such as this one, modification of the stay is appropriate. Courts look at the factors surrounding the issues to make such a determination. *Plumberex Specialty*, 311 B.R. 551, 562-564; *Walker v. Wilde (In re Walker)* 103 B.R. 281, 284-285 (D.Utah 1989) and *In re: Curtis* 40 B.R. 795, 799 (Bankr. D. Utah 1984).

¹ The last four digits of Caesars Entertainment Operating Company Inc.'s tax identification number are 1623.

The *Curtis* Court outlined twelve factors for courts to weigh when considering modification of the stay:

- a) Whether relief will result in partial or complete resolution of the issues;
- b) The lack of any connection with or interference with the Bankruptcy Court;
- c) Whether the foreign proceeding involves the debtor as a fiduciary;
- d) Whether a specialized tribunal has been established to hear the particular cause of action and whether the tribunal has the expertise to hear such cases;
- e) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- f) Whether the action essentially involves third parties, and the debtor functions only as a Bailee or conduit for the goods or proceeds in question;
- g) Whether the litigation in another forum would prejudice the interest of other creditors, the creditors' committee and other interested parties;
- h) Whether the judgment claim arising from the foreign action is subject to the equitable subordination under 510(c);
- i) Whether the movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- j) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- k) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- l) The impact of the stay on the parties and the "balance of hurt."

See, *Plumberex*, 311 B.R. at 559 citing and quoting *Curtis* 40 B.R. at 99-100.

The above factors weigh heavily in favor of stay modification in this matter.

9. Here, the New Jersey litigation involves a claim of wrongful death. Allowing the parties to fully litigate the issue in the Circuit Court would fully and completely resolve the issues. Allowing the claim to proceed is the only way to determine not only liability but the amount of liability.

10. The determination of liability would not interfere with the bankruptcy case, but would assist in the determination of the claim of the movant.

11. Because there is insurance coverage for the claim of the movant, the litigation would not affect any only creditor in the bankruptcy case nor would the litigation interfere with the bankruptcy process.

12. Allowing stay modification would also promote judicial economy. At the time the Bankruptcy was filed, the Complaint was filed and an answer to that complaint was also filed. The parties are at issue in the litigation and allowing it to proceed locally would support judicial economy.

13. Additionally, the Circuit Court of New Jersey is the proper venue for the determination of liability in a Wrongful Death case.

14. Maintaining the stay against a creditor such as DONNA CERIONE, ET AL/DOMINIC DETETTA works as a greater hardship than the Debtors would suffer. Here, the stay impacts the ability for the movant plaintiff to liquidate her damages while the debtors have no such impact. More importantly, the stay modification would not negatively impact the debtors because there is an insurer which will defend the underlying matter in accordance with its contractual obligations to do so.

15. That no cause exists to stay the execution of this order.

WHEREFORE, DONNA CERIONE, ET AL/DOMINIC DETETTA prays that this Honorable Court enter an Order modifying the restraining provisions of § 362 of the Bankruptcy Code to permit the said DONNA CERIONE, ET AL/DOMINIC DETETTA or its assigns to proceed against the non-debtor defendants; that Bankruptcy Rule 4001(a)(3) is waived and not applicable, and for such other and further relief as this court deems just and proper.

DONNA CERIONE, ET AL/DOMINIC DETETTA

By: /s/Amy A. Aronson
Amy A. Aronson, One of its Attorneys

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